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ELECTRONICALLY FILED

Attorneys for Plaintiff Energy Brands Inc. d/b/a Glacéau

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

----- X	
ENERGY BRANDS INC. d/b/a GLACÉAU,	:
	:
Plaintiff,	:
	:
v.	:
	:
SPIRITUAL BRANDS, INC. and ELICKO	:
TAIEB,	:
	:
Defendants.	:
----- X	

07 Civ. 10644 (DC)

**DECLARATION OF JOSEPH
 AGLIONE IN SUPPORT OF
 PLAINTIFF'S MEMORANDUM
 IN OPPOSITION TO
 DEFENDANTS' MOTION TO
 DISMISS**

ECF Case

- I, Joseph Aglione, hereby declare as follows:
1. I am a private investigator licensed by the State of New York. The name of my firm is The Stonegate Agency, Inc., which is located in New York City. I have over 42 years of experience in investigative work.
 2. I submit this declaration in support of Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss.
 3. On or about November 13, 2007, I was asked by counsel for Glacéau to make a purchase of Defendants' **spiritual**water product, which I proceeded to do through Defendants' website, located at www.spiritualh2o.com.

4. Attached as Exhibit A are true and correct printouts of various pages from Defendants' website that appeared on my computer screen on November 13, 2007 during the process of initiating and completing my purchase of Defendants' **spiritualwater** product via their website (with credit card information redacted), as well as a receipt that I received from Defendants confirming my purchase. As the documents reflect, I made the purchase in my wife's name, Joan Aglione.

5. Attached as Exhibit B is various email correspondence between me and Defendants regarding my purchase of Defendants' **spiritualwater** product via their website.

6. I have reviewed Exhibit G attached to Defendants' Declaration of Scott Zarin, Esq., which purports to disclose all sales made by Defendants to individuals located in New York. Exhibit G **does not** include the sale that was made to "Joan Aglione" even though the product was shipped to my wife and me in New York.

I hereby declare, under penalty of perjury, that the foregoing is true and correct.
Executed in New York, New York on May 15, 2008.

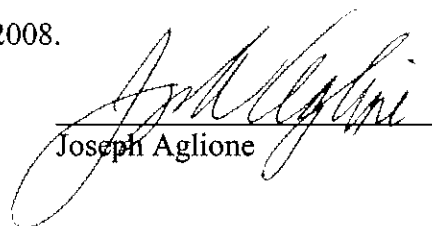

Joseph Aglione

EXHIBIT A

SpiritualH2O.com presents:

now in your cart **2 items**

Enter keyword

search

Advance Search

- 2 Contact Us
- 2 Create a FREE Account
- 2 Log Off

MAIN PAGE

NEW PRODUCTS

MY ACCOUNT

SHOPPING CART

ABOUT US

CATEGORIES

Spiritual Water

INFORMATION

- Shipping, Warranty & Returns
- Privacy Notice
- Conditions of Use
- About Us
- Contact Us

New Products

**SPIRITUAL WATER 6-Mix Pack**

Price: \$9.99

Add to Cart

**FOCUS WATER 24-Pack**

Price: \$38.00

Add to Cart

**DEFENSE WATER 24-Pack**

Price: \$38.00

Add to Cart

FORMULA J' WATER 24-Pack

Price: \$38.00

Add to Cart



BALANCE WATER 24-Pack
Price: \$38.00

 **Add to Cart**



FOCUS WATER 6-Pack
Price: \$9.99

 **Add to Cart**



FORMULA J' WATER 6-Pack
Price: \$9.99

 **Add to Cart**



DEFENSE WATER 6-Pack
Price: \$9.99

 **Add to Cart**



BALANCE WATER 6-Pack
Price: \$9.99

 **Add to Cart**

SpiritualH2O

Page 3 of 3



DEFENSE WATER

Price: \$1.79

 **Add to Cart**

Displaying 1 to 10 (of 13 new products)

Result Pages: 1 2 [Next >>]

[Main Page](#) | [My Account](#) | [Shopping Cart](#) | [Checkout](#) | [Privacy Notice](#) | [Contact Us](#)

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Spiritual Water Patent Pending #60/947385



SpiritualH2O.com presents:



now in your cart 0 items

Enter keyword

Search

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MAIN PAGE

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Shipping & Returns

In order to maintain product safety and to protect our valuable customers, please be advised that bottled water is a consumable product and therefore, we do NOT honor returns.

Please select your product carefully. We will only replace or refund your order if the product is defective, damaged/destroyed during shipping, or if you receive the incorrect product due to our error. Please note that we must be notified within 48 hours of the package(s) being signed for (in person or by release) to honor any refund/replacement requests.

While we will make every effort to get your product to you as quickly as possible, we will not be responsible for shipping delays due to weather or acts of God.

Any approved refunds will be credited to your method of payment within 7 days of receiving your return. Please allow two billing cycles for your refund to appear on your statement.

Apparel/Accessory returns: We must be notified within 48 hours of the package(s) being signed for (in person or by release) to honor any refund/replacement requests. Customer pays all fees for return shipping.

We will only assume the shipping cost if you receive the incorrect product due to our error, the product is defective, or the product was damaged/destroyed in transit.

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SpiritualH2O.com presents:



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Enter keyword

search

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☐ Spiritual Water

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- ▶ Contact Us

Payment Information

Billing Address

Please choose from your address book where you would like the invoice to be sent to.

Billing Address:

n/a

Joan Aglione

27 Whitehall St #8

New York, NY 10004

United States

Change Address

Payment Method

Please select the preferred payment method to use on this order.

Please Select

Linkpoint Connect

Credit Card Name:

Joan Aglione

Credit Card Number:

REDACTED

Card Verification Value:

(last 3 or 4 digits on back of credit card)

Not present or unreadable: ☐

Credit Card Expiry Date:

PayPal

Add Comments About Your Order

Continue Checkout Procedure
to confirm this order.

Continue

Delivery Information

Payment Information

Confirmation

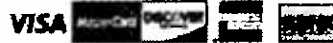
Finished!

[Main Page](#) | [My Account](#) | [Shopping Cart](#) | [Checkout](#) | [Privacy Notice](#) | [Contact Us](#)

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SpiritualH2O.com presents:

now in your cart **2 items**

Enter keyword

Search

Advance Search

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NEW PRODUCTS

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☐ Spiritual Water

INFORMATION

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- ▶ About Us
- ▶ Contact Us

Order Confirmation: This order will show on your credit card statement as ForUsByUs

Delivery Address [\(Edit\)](#)

n/a
Joan Aglione
27 Whitehall St #8
New York, NY 10004
United States

Products [\(Edit\)](#)

2 x BALANCE WATER 6-Pack

\$19.98

Shipping Method [\(Edit\)](#)

Table Rate (Best Way)

Billing Information by our partner FOR US BY US - you will receive a confirmation email

Billing Address [\(Edit\)](#)

n/a
Joan Aglione
27 Whitehall St #8
New York, NY 10004
United States

Sub-Total: \$19.98

Table Rate (Best Way): \$9.95

Total: **\$29.93**Payment Method [\(Edit\)](#)

Linkpoint Connect

Payment Information by our partner FOR US BY US

Linkpoint Connect: American Express

Credit Card Name: Joan Aglione

Credit Card Number:

Credit Card Expiry Date:

Card Verification Value:

REDACTED

Confirm Order

Delivery Information

Payment Information

Confirmation

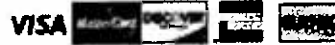
Finished!

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Subj: **Receipt from FORUSBYUS, INC**
Date: 11/13/2007 10:24:05 A.M. Eastern Standard Time
From: gateway@linkpt.net
To:

REDACTED

Company: FORUSBYUS, INC
Reference Number: 172.30.184.48-1163997ECC8-AA0877-142BB92

Subtotal: \$29.93
Tax: \$0.00
Shipping: \$0.00
Total: \$29.93

FORUSBYUS, INC

JA

Tuesday, November 13, 2007 America Online:

JA
REDACTED

EXHIBIT B

Subj: **Welcome to Spiritualwater**
Date: 11/13/2007 10:17:08 A.M. Eastern Standard Time
From: support@spiritualh2o.com
To:

REDACTED

Dear Joan

We welcome you to Spiritualwater.

You can now take part in the various services we have to offer you. Some of these services include:

Permanent Cart - Any products added to your online cart remain there until you remove them, or check them out.

Address Book - We can now deliver your products to another address other than yours! This is perfect to send birthday gifts direct to the birthday-person themselves.

Order History - View your history of purchases that you have made with us.

Products Reviews - Share your opinions on products with our other customers.

For help with any of our online services, please email the store-owner: support@spiritualh2o.com.

Note: This email address was given to us by one of our customers. If you did not signup to be a member, please send an email to support@spiritualh2o.com.

Tuesday, November 13, 2007 America Online:


REDACTED

SpiritualH2O.com presents:



now in your cart 2 items

Enter keyword

search

Advance Search

- Contact Us
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MAIN PAGE

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Contact Us

⚠ Your E-Mail Address does not appear to be valid - please make any necessary corrections.

Full Name:

E-Mail Address:

REDACTED

Inquiry:

I tried sending an Email to you concerning an order placed on November 13th. A message said my Email address appears to be incorrect. Hence, another message.

I ordered two-six packs of Spiritual Water on 11-13 [Total \$29.93]. I received confirmation from gateway@linkpt.net, reference number 1730.30.184.48-1163997ECC8-AA-877-142B892.

I logged on to my account and was told I have not placed any orders.

What is going on?

When can I expect the product?

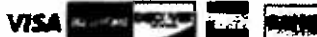
Joan Aglione

Continue

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 Spiritual Water Patent Pending #60/947385

POINT TO VERIFY™



Subj: **Re: Welcome to Spiritualwater**
Date: 11/16/2007 11:13:47 A.M. Eastern Standard Time
From:
To: support@spiritualh2o.com

REDACTED

Ellicko:

Here is what Joan received from gateway@linkpt.net on 11-13-07 at 10:24 a.m. It is followed by your welcoming Email to Joan. Please call me at _____ when you figure out what happened. She is driving me crazy.

Thanks,

REDACTED

Joe

Company: FORUSBYUS, INC
Reference Number: 172.30.184.48-1163997ECC8-AA0877-142BB92

Subtotal: \$29.93
Tax: \$0.00
Shipping: \$0.00
Total: \$29.93

FORUSBYUS, INC

In a message dated 11/13/2007 10:17:08 A.M. Eastern Standard Time, support@spiritualh2o.com writes:

Dear Joan

We welcome you to Spiritualwater.

You can now take part in the various services we have to offer you. Some of these services include:

Permanent Cart - Any products added to your online cart remain there until you remove them, or check them out.
Address Book - We can now deliver your products to another address other than yours! This is perfect to send birthday gifts direct to the birthday-person themselves.
Order History - View your history of purchases that you have made with us.
Products Reviews - Share your opinions on products with our other customers.

For help with any of our online services, please email the store-owner: support@spiritualh2o.com.

Note: This email address was given to us by one of our customers. If you did not signup to be a member, please send an email to support@spiritualh2o.com.

See what's new at AOL.com and Make AOL Your Homepage.

Friday, November 16, 2007 America Online:

REDACTED

Subj: **RE: Welcome to Spiritualwater**
Date: 11/16/2007 11:57:41 A.M. Eastern Standard Time
From: support@spiritualh2o.com
To:

Joe,

REDACTED

Your order is processing and will go out today via UPS.

We apologies for any inconvenience!

Thanks,

The Spiritual Water Support Team

Spiritual Brands, Inc.
4301 South Flamingo Road
#103-204
Davie, FL 33330 USA

Toll Free: +1 800 736 9070
Fax: +1 954 208 0696
Email: support@SpiritualH2O.com
www.spiritualH2O.com

SpiritualWater - Do You Believe?

REDACTED

From: **REDACTED**
Sent: Friday, November 16, 2007 11:14 AM
To: support@spiritualh2o.com
Subject: Re: Welcome to Spiritualwater

Elicko:

Here is what Joan received from gateway@linkpt.net on 11-13-07 at 10:24 a.m. It is followed by your welcoming Email to Joan.
Please call me at _____ when you figure out what happened. She is driving me crazy.

Thanks,

REDACTED

Joe

Company: FORUSBYUS, INC
Reference Number: 172.30.184.48-1163997ECC8-AA0877-142BB92

Subtotal: \$29.93
Tax: \$0.00
Shipping: \$0.00
Total: \$29.93

FORUSBYUS, INC